Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
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No. .....

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1987

MICHAEL SCHAEFER,
Appellant,
vs.
STATE ADMINISTRATIVE BOARD OF ELECTION LAWS,
Appellee.

On Appeal from the Circuit Court of the State of Maryland, County of Anne Arundel.

JURISDICTIONAL STATEMENT

MICHAEL SCHAEFER
723 St. Paul St.
Baltimore, MD 21202
(301) 332-0405

and

8840 Villa La Jolla Dr., # 112
La Jolla, Calif. 92037
(619) 450-0720

Appellant Pro Se

December 8, 1987

BEST AVAILABLE COPY

QUESTIONS PRESENTED

(1) Whether Art. 33, Sec. 16-5, Elections Code, Annotated Code of Maryland is repugnant to the United States Constitution in that it appears to grant an artificial advantage to political candidates having low-alphabetical surnames by according such candidates preferential ballot listing positions, denying equal protection of the laws to all other candidates for the same office?

(2) Whether award of costs against a citizen petitioning his government is repugnant to the citizen's rights to petition for redress of grievances as protected by the United States Constitution?

(3) Whether the happening of an election renders moot issues raised by a candidate that are capable of repetition in subsequent elections?

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(Amended Notice of Appeal Filed Nov. 19, 1987 by Mail).

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No. .....

In the Supreme Court

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OCTOBER TERM, 1987

MICHAEL SCHAEFER,
Appellant,

VS.

STATE ADMINISTRATIVE BOARD OF ELECTION LAWS,
Appellee.

On Appeal from the Circuit Court of the State of Maryland, County of Anne Arundel.

JURISDICTIONAL STATEMENT

Michael Schaefer, appellant, appeals from final judgment of the Maryland Court of Appeals denying petition for writ of certiorari, and substantive judgments of courts below holding that Maryland's alphabetical listing law used for determining ballot format in public elections was constitutional and not a denial of equal protection of the law, and that Schaefer was subject to payment of costs incurred by defending election officials.

OPINIONS BELOW

The Order of the Court of Appeals of Maryland appears in the appendix hereto.

Opinion and Judgment of the Court of Special Appeals, and the Circuit Court of Appeals, dated May 1, 1987 and

August 28, 1986, respectively, are unreported opinions and are reprinted in full in appendix hereto.

JURISDICTION

Judgment of the Circuit Court of the State of Maryland granting summary judgment to appellee was filed August 28, 1986; appeal taken to the Court of Special Appeals, dismissed with costs awarded against appellant May 1, 1987; Motion for Reconsideration of said dismissal filed June 1, 1987, denied June 2, 1987; petition for writ of certiorari filed with Court of Appeals, denied in Order dated September 9, 1987.

This appeal is being docketed within 90 days from denial of petition for writ of certiorari by Maryland's highest Court. Jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Fourteenth Amendment, United States Constitution:

> No state shall enforce any law which shall abridge privileges or immunities of citizens of the United States . . . nor deny to any person . . . the equal protection of the law.

First Amendment, United States Constitution:

> Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.

Annotated Code of Maryland, Art. 33, Sec. 16-5, Elections Code:

In all elections, the names of candidates for every office shall be arranged alphabetically on the ballots of their party according to their surnames.

STATEMENT OF THE CASE

THE FACTS

Appellant Michael Schaefer, a Baltimore, Md. hotel owner and California lawyer, became one of eleven candidates for the Republican nomination for United States Senate to succeed retiring Senator Charles Mathias in Maryland's 1986 federal elections. Schaefer ran 2nd to Linda Chavez, with Chavez losing to Democrat nominee Barbara Mikulski in the general election.

Within a week of filing for office, Schaefer filed a civil complaint to enjoin certificate of candidates for the U.S. Senate nomination on an alphabetical basis, he being aware that 36 states utilized nonalphabetical procedures and desiring a chance at being at the top of such long list of candidates.

Temporary restraining order as to candidate certification was denied, the ballots were designed on an alphabetical basis, and on August 28, 1986 the Circuit Court granted summary judgment to defendant election officials, Judge James C. Cawood, Jr. finding that a position at the top of the ballot is desirable, that plaintiff's argument is best addressed to the Legislature, and whether applying a "rational basis" or "strict scrutiny" test, the Maryland system of alphabetical listing "passes constitutional muster".

Appeal to Court of Special Appeals was dismissed upon a finding of mootness, the election by then being history. Motion for Reconsideration as to mootness denied. Costs assessed against appellant. Petition to the Court of Ap-

peals seeking review of the constitutional issues, the mootness finding, and the costs assessment was summarily denied, the court finding insufficient showing of desirability or public interest to merit review. It is from such proceedings that timely appeal has been filed.

How The Federal Question Was Raised

Schaefer's civil complaint asserted that Maryland's alphabetical listing law was unconstitutional in that it denied equal protection of the law to plaintiff contrary to the United States Constitution, asserting an advantage inuring to candidates at the top of a ballot list and plaintiff's posture as being listed 10th out of 11 candidates.

It was raised in supplemental points and authorities filed prior to injunction hearing citing the cases discussed in argument elsewhere in this Jurisdictional Statement, in appeal to the Court of Special Appeals, and in petition for writ of certiorari addressed to Maryland's highest court. The First Amendment rights of appellant to petition his government without jeopardy of costs or retaliatory litigation was posed in petition for writ of certiorari to the Maryland Court of Appeals, and found to lack desirability or public interest for review. The Fourteenth Amendment rights of citizen candidates was also argued in said petition for writ of certiorari.

Federal constitutional claims have been considered and expressly rejected by the trial court (as to the Fourteenth Amendment), and by the Court of Appeals (as to First and Fourteenth Amendment assertions).

THE QUESTIONS ARE SUBSTANTIAL

Alphabet As Basis For Listing Candidates

Throughout the land there is inconsistency in both judicial decisions and legislative enactments as to this issue. Of our 51 jurisdictions, 14 continue to use the alphabet exclusively, 17 provide for rotation of candidate names, 8 utilize a lottery, 5 go by the filing date and 7 use other means or a combination of methods. The present system invites a candidate to change his or her name to Aardvark, thus topping any ballot list in 14 jurisdictions and gaining an advantage of up to 15% in opinion of election experts. Candidates with mid-alphabet names are perpetually consigned to being in the middle of any list of citizens seeking office. This is not the fundamental fairness that characterizes our administration of justice. There is inconsistency in federal elections.

In *Gould v. Grubb*, (1975) 14 Cal.3d 661, 536 P.2d 1337, 122 Cal.Rptr. 377, the California Supreme Court struck down the City of Santa Monica's charter provision providing that incumbents shall appear at the head of any ballot followed by other candidates in alphabetical order. Such procedure followed state statutes. The Court there found that any election procedure required "strict judicial scrutiny" and would survive challenge only if there was a "compelling governmental interest to protect". Appellant sees no government interest to protect other than possible convenience to election clerks in not having to deal with randomnizing procedures, or possible maintenance of an existing advantage enjoyed by incumbent officials having low-alphabetical surnames. California subsequently enacted *Elections Code Section 10217* to provide a randomized alphabet with rotation of names where an office included several political districts.

Statistical experts testimony has been adopted by several courts in their opinions on the status of alphabetical listing laws. In *Culliton v. Board of Election Commissioners,* (USDC-Ill. 1976) 419 F.Supp. 126, evidence indicated that "it would be a denial of equal protection to arbitrarily give candidates such a head start towards victory" specifically that a 3% advantage would create a 6% hurdle which other candidates must overcome.

This Court has held that the concept of equal protection of the laws has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to government action questioned or challenged; that a denial of constitutionally protected rights demands judicial protection". *Reynolds v. Sims,* (1964) 377 U.S. 533.

Alphabetical listing of candidates is followed by the states of Alabama, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Mississippi, Nevada, Rhode Island and Tennessee. *Rotation* of candidate names exists in Alaska, Arizona, Idaho, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Montana, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Vermont and Wyoming. *Lottery* is used in Arkansas, District of Columbia, New York, Pennsylvania, South Dakota, Texas, Utah and Wisconsin. *Filing date* determines in Illinois, Missouri, Nebraska, New Jersey and Virginia. *Rotation and Alphabetical* combination is utilized by New Hampshire. *Rotary and Lottery* combination is used in California and West Virginia. *Other* procedures are followed by Massachusetts, New Mexico, South Carolina and Washington. (This information was provided by the *National Conference of State Legislatures.*)

The trial court found the Maryland statute constitutional "whether applying a 'rational basis' or a 'strict

scrutiny' test". Appellant submits that "strict scrutiny" is required of any law that provides artificial advantages to some candidates over others. The "rational basis standard is proper only as to 'purely mechanical details of the election process' having 'minimal impact on right to vote', a 'stricter standard' must be applied where the classification system has real and appreciable impact on equality, fairness and integrity of electoral process." *Libertarian Party v. Eu,* (1978) 83 Cal.App.3d 470, 147 Cal.Rptr. 888; *Gould v. Grubb, supra.*

If any of the Maryland courts had strictly scrutinized the challenged statute, it would not have passed "constitutional muster", and we would not be reviewing actions below.

There are decisions upholding use of the alphabet. *Clough v. Guzzi,* (D. Mass. 1970) 416 F.Supp. 1057 involved an asterisk mark advantage to an incumbent with the concept of alphabetical listing being secondary to the case.

In *Kautenburger v. Jackson,* (1958) 85 Ariz. 128, 333 P.2d 293, the court held that it was proper to interfere in the event the method prescribed by statute unconstitutionally discriminates in favor of one candidate against another, finding that "listing in alphabetical order deprives candidates of a fundamental right which was entitled to protection under the privileges and immunities article of the Constitution."

California's write-in ballot case, *Canaan v. Abdelnour,* (1985) 40 Cal.3d 703, 710 P.2d 268, 221 Cal.Rptr. 468, in which appellant served as petitioners' counsel, suggests an analysis method for election issues. The Court must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth

Amendment that plaintiff seeks to vindicate; it must then identify and evaluate the precise interests put forward by the State as justification for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it must also consider the extent to which these interests make it necessary to burden plaintiff's rights.

Schaefer being consigned to 10th spot in a laundry list of 11 citizens seeking high office is burdened. Somebody must be in the 10th spot. But all candidates should have an opportunity to be on top, either in all voting districts, or in some of them, as happens when a rotation system is in effect.

And it's not just the candidates that are affected. The rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical correlative effect on voters. *Anderson v. Celebrezze,* (1983) 460 U.S. 780, 789.

These waters are not unchartered. But they are at times conflicting and the success of a federal candidate with a mid-alphabet surname may depend on what state he runs in.

The standard of review utilized in voting and election cases, like the equal protection doctrine in general, has been in a state of flux. See *Gunther,* The Supreme Court, 1971 Term — Forward: In Search of an Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection (1972) *86 Harv.L.Rev., pp. 1, 10-15.*

The Constitution is filled with provisions that grant . . . the States specific power to legislate in certain areas; these granted powers are always subject to the limitation that they may not be exercised in a way that violates other specific provisions of the Constitution. *Williams v.*

Rhodes, (1968) 393 U.S. 23, 29. Justice Douglas, in his concurring opinion at page 39, noted "I would think that a State has precious little leeway in making it difficult . . . for citizens to vote for whomever they please". In the instant case, supporters of Schaefer would have to search through 11 names to find their candidate, and are somewhat likely to pick their 2nd choice if the 2nd choice's name pops into view . . . and the voter being allowed but one vote, Schaefer would miss out. Rotation is the fairest system, and combined with a random alphabet the California procedure offers perhaps the fairest that minds of man can conceive. *Calif. Elections Code Sec. 10217.*

Legislative bodies retain considerable discretion in devising regulations for the form and content of ballots . . . the exercise of such discretion remains subject to constitutional limitations. *Canaan v. Abdelnour, supra.*

A fundamental goal of a democratic society is to attain the free and pure expression of the voter's choice of a candidate. To that end, our federal Constitution mandates that the government must, if possible, avoid any feature that might adulterate or, indeed, frustrate, that free and clear choice. *Gould v. Grubb, supra.*

The power of the state to regulation elections must be exercised consistent with dictates of Equal Protection clause of the Fourteenth Amendment. *Sangmeister v. Woodard,* (CA-7, 1977) 565 F.2d 460. This case upheld the trial court's conclusion that alphabetical placement on ballots provided an advantage.

Election questions are usually substantial questions. When large numbers of candidates in many jurisdictions are affected, the issue is of particular significance. When there is an advantage, no matter how slight, that processes of government have in their machinery the

ability and capacity to remedy, need for attention is evident. The aspiration of every candidate should be to do battle on a level playing field. Inaction by the courts maintains a status quo that numerous appellate courts have condemned. The alphabet has its place, but not in determining which citizens have favored position in presenting their candidacy to their constituency.

Citizens' Immunity in Petitioning Government

Citizens should be encouraged to petition their government without fear of reprisal, jeopardy, or retaliation. Citizens have little or no control over costs incurred by a government of sometimes unlimited resources to defend. To allow the government, after defeating a citizen's claim, to pursue civil actions for abuse of process, or to levy substantial costs bill, has a "chilling" effect on the citizens' access to government.

In *City of Long Beach v. Bozek,* (1982) 31 Cal.3d 527, 645 P.2d 137, 183 Cal.Rptr. 86, the California Supreme Court held that a citizen challenging his government could not be sued for malicious prosecution. This Court, in Case No. 82-353, January 10, 1983, remanded the case to the California court to determine if its action was based on federal or state constitutional grounds; the California court deciding it was based on both. The court found that "the right to petition for redress of grievances protects attempts to obtain redress through all three branches of government" and that such actions "would generate a potential chilling effect of considerable dimension on exercise of the right to petition the government through the courts". It is essential to protect the ability of those who perceive themselves to be aggrieved by the activities of governmental authorities to seek redress. If cities are permitted to recover against those who have

unsuccessfully sued them, the institution of legitimate as well as baseless legal claims will be discouraged. It is not unlikely that even good faith claimants would forego suit in order to avoid the possibility of having to pay city fees should their action against the city prove unsuccessful. *Id.*

This question is substantial because it affects every citizen who questions a practice of local, state or federal government. Citizens are protected by the *First Amendment* as to their right to complain. And no state can infringe upon that right by raising financial hurdles. At any stage of any proceeding. And more importantly, in cases affecting large numbers of people, and being in the public interest.

Mootness

This Court has previously rejected dismissal of an action based on an election having come and gone. In *Moore v. Ogilvie,* (1969), 394 U.S. 814, 816, the Court noted that the election had been held, but that the problem is "capable of repetition, yet evading review", the burdens placed on the candidates remains, and controls future elections. "We then turn to the merits".

Such was argued in a supplemental point and authority to the Court of Appeals, on the question of dismissal for mootness by the court below, without avail.

Election litigation does not arise in a vacuum. There is an ongoing pressure to prepare election materials, with election officials claiming prejudice as to any delay. Maryland has not evaluated this issue further than a summary judgment hearing. Appellant may be a candidate again. Maryland will be conducting federal and nonfederal elections in the future. Election cases are an exception to the

mootness doctrine. It is important for this Court to so declare.

The "capable of repetition" requirement for exception to mootness, for cases capable of repetition yet evading review, requires the Court of Appeals to determine whether there is a demonstrated probability of reasonable expectation, as distinct from mere physical or theoretical possibility, that the conduct complained of will recur, thereby keeping the matter susceptible to judicial resolution. *New Jersey Turnpike Authority v. Jersey Central Power & Light*, (C.A.-3 N.J., 1985) 772 F.2d 25.

The Court of Special Appeals should have decided the issue on the merits. Constitutional rights were swept under the rug.

CONCLUSION

For the foregoing reasons, this Court should note probable jurisdiction of this appeal.

December 7, 1987

Respectfully submitted,

MICHAEL SCHAEFER
723 St. Paul St.
Baltimore, MD 21202

and

8840 Villa La Jolla Dr., #112
La Jolla, Calif. 92037

Appellant Pro Se

APPENDIX A

IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY

Case No. 3108919

MICHAEL SCHAEFER
Plaintiff
VS.
STATE ADMINISTRATIVE BOARD
OF ELECTION LAWS, et al.
Defendants

OPINION AND ORDER

As long as there has been a written language there has been an alphabet. By the second or third grade, every student has been trained in arranging words in alphabetical order. In this interesting case we are asked to declare unconstitutional the use of the alphabet as sole guide in preparing the ballot for Republican nominations for the United States Senate, and by inference, in preparing the entire ballot. While we find that Plaintiff's argument is an interesting one, we believe it is best addressed to the Legislature and not to this Court. Accordingly, we give him the proverbial "A" for effort and decide against him.

Michael Schaefer, a candidate for nomination in the Republican Senatorial Primary, asked us to enjoin the use of an alphabetical ballot in the September primary. On July 8, 1986, we heard and denied a request for preliminary injunction. Thereafter counsel for the State Defendants moved for summary judgment. Plaintiff indicated that he would also move for summary judgment but was unable, because of time constraints, to do so. Such causes

no prejudice, as we are disposed to grant Defendants' Motion for Summary Judgment in any event.

The only possible material issue of fact is the desirability of a position at the top of the ballot. For the purposes of this Motion we accept this postulate as true, thereby avoiding a lengthy discussion of judicial notice. We then turn to the two cases which discuss the issue, *Gould v. Grubb,* 536 P.2d 1337, 122 Cal.Rptr. 377, and *Clough v. Guzzi,* 416 F.Supp. 1057 (D.Mass.).

While on point, both cases are more concerned with the treatment of incumbents than with alphabetical listing. In the California case, a charter provision of the City of Santa Monica, embodying the State Electoral Code, provided that incumbents shall appear at the head of any ballot in alphabetical order, followed by other candidates in the same order. The Massachusetts Statute construed by the three-judge bench in *Clough v. Guzzi, supra,* was similar. The two courts reached diametrically opposite conclusions; the State Court finding both the alphabetical and incumbency provisions unconstitutional and the Federal Court deciding that both were permissible.

The preferential placing of incumbents might well present a closer case, but it is not involved here. Alphabetical order has been commonly accepted for listing of people since the history of the alphabet, and was the way all or almost all ballots were originally set up. According to the figures given us, about 30% of the States still use it. Others use rotation, lottery or a combination thereof. It is important to distinguish between the desirable and the constitutional, the preferable and the mandatory. Substituting the words "alphabetical arrangement" for "incumbency", we accept the logic of *Clough v. Guzzi, supra:*

> "The fact that some statistical advantage may at the same time accrue to one of the candidates by virtue of his or her incumbency does not for constitutional purposes invalidate that otherwise legitimate purpose, especially where that advantage remains problematic and variable from election to election. And whether for purposes of a more absolute fairness that advantage warrants a different statutory scheme is properly a legislative consideration. We therefore hold that the Massachusetts statutes are constitutionally permissible under the equal protection clause of the fourteenth amendment." 416 F.Supp. at 1068.

Whether applying a "rational basis" or "strict scrutiny" test, we think the Maryland system of alphabetical listing passes constitutional muster, and leave to other bodies the equally interesting question of whether it ought to be changed as a matter of policy.

Accordingly, it is by the Court, this 28th day of August 1986,

ORDERED, that Plaintiff's Motion for Summary Judgment be and it is hereby granted, and judgment is entered on behalf of the Defendants with costs.

JAMES C. CAWOOD, JR., Judge

Copies to:
Michael Schaefer
Paul E. Sullivan, Esquire
Linda H. Lamone, Esquire
Nicholas T. Nonnenmacher

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
No. 1418
September Term, 1986

MICHAEL SCHAEFER
v.
STATE ADMINISTRATIVE
BOARD OF ELECTION LAWS, et al.

GILBERT, C.J.
BELL, ROSALYN B.,
KARWACKI,
JJ.

PER CURIAM

Filed: May 1, 1987

The appellant, Michael Schaefer, and ten other persons filed certificates of candidacy in the 1986 primary election for the Republican nomination for the office of United States Senator from Maryland.[1] Md. Ann. Code art. 33, § 16-5(a) requires that "the names of candidates . . . be arranged alphabetically on the ballots of their party according to their surnames. . . ." In the resulting configuration of names in the September 9, 1986, primary election for the Republican nomination, Mr. Schaefer was listed tenth from the top on ballots with vertical listing (punchcard system and absentee ballots), at the botton of the first of three columns of names on the Shoup Voting Machine (ballot laid out vertically), and at the top of the

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[1]Ten Democrats filed certificates of candidancy for the Democratic nomination. Nine of those persons were placed on the ballot in the 1986 primary election.

last of four columns of names on the Automatic Voting Machine (ballot laid out horizontally).[2]

Slightly more than sixty days before the primary, Mr. Schaefer, in the Circuit Court for Anne Arundel County, filed a complaint against the State, the State Administrative Board of Election Laws (SABEL), the Administrator of that Board, and the other candidates for the Republican nomination. The action against the other Republican candidates was later voluntarily dismissed. Schaefer's complaint alleged that § 16-5(a) is "unconstitutional, in that it denies equal protection of the law to [Mr. Schaefer] . . . ." He asked the court

> "[to] declare [§ 16-5(a)] unconstitutional and order election agencies and officials to proceed in a manner consistent with plaintiff's constitutional rights . . . ; [to issue] a permanent injunction enjoining and restraining defendant agency and official from certification of candidates in an alphabetical manner as to election of Republican Nominee for U.S. Senate in the September 9, 1986 primary election . . . ; [and he moved] for issuance of an interlocutory or preliminary injunction forthwith, upon hearing, to restrain and enjoin said agency and official from certification of candidates in any manner of ballot listing other than one designed to assure fairness and impartiality as to plaintiff . . . ."

The matter was heard before Judge James C. Cawood Jr. on July 8, 1986. Mr. Schaefer asked the court to "find [§ 16-5(a)] unconstitutional, as applied to the facts

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[2]Md. Ann. Code art. 33, § 16-5(b) states that "[i]f two or more columns . . . are used for the names of candidates for the same office, the same number of names, so far as possible, shall be printed in each column. . . ."

before the Court . . . ." Judge Cawood denied the motion. The appellees moved for summary judgment. Judge Cawood granted that motion on August 28, 1986. The primary election was held on September 9, 1986. Mr. Schaefer, who was unsuccessful in the election, filed this appeal from the August 28, 1986, judgment.

Appellees move to dismiss this appeal on the grounds that the appellant's brief was "filed . . . late" and that the appellant did not comply with Md. Rule 1028 regarding the printed record extract.

The parties stipulated to an extension of the February 9, 1987, date for filing the appellant's brief "by an amount of time necessary for transmission . . . by United States Mail from California to Maryland." Schaefer's brief was to be mailed by February 7, 1987, but it was not mailed until February 9. It was filed with this Court on February 19. The appellees allege that the filing was "ten days late," but the only variation to the stipulation is that the brief was deposited in the mail two days late. In any event, the brief was filed, as Md. Rule 1030 c.l. requires, at least thirty days before the case was scheduled for argument on April 21, 1987. Insofar as there were any violations of Md. Rule 1028, the appellee corrected the deficiencies in the appellant's record extract. *Burdette v. LaScola,* 40 Md. App. 720, 736 (1978), *cert. denied,* 284 Md. 745 (1979). At oral argument the State withdrew its motion to dismiss this appeal.

We turn now to the issue raised:

> "Does Maryland's 'alphabetical listing law' violate Equal Protection of the Law guarantees of the Maryland and United States Constitutions?"

The question as presented to and decided by the circuit court, however, was whether § 16-5(a) is "unconstitu-

tional, as applied to the facts before . . . [that] Court." We shall address the appellant's question in its narrower form since it relates to the judgment from which this appeal was taken. *See* Md. Rule 1085.

> "Generally, appellate courts do not decide academic or moot questions. A question is moot if, at the time it is before the court, there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide."

Attorney General v. Anne Arundel County School Bus Contractors Association, Inc., 286 Md. 324, 327 (1979), quoted in *Mercy Hospital, Inc. v. Jackson,* 306 Md. 556, 561 (1986), *rev'g* 62 Md. App. 409 (1985).

The primary election of September 9, 1986, has long since taken place. Based on the particular relief sought, as described *supra,* no controversy currently exists between the parties; no effective remedy is possible; and the question raised has become moot. *Dudley v. State Roads Commission,* 224 Md. 613, 618 (1961); *Iverson v. Jones,* 171 Md. 649, 652-53 (1936).

When a case becomes moot, we should dismiss the appeal without expressing our views on its merits. *Mercy Hospital, Inc. v. Jackson,* 306 Md. at 562; *see* Md. Rule 1035 b.8. In "rare instances which demonstrate the most compelling of circumstances," we may depart from the general rule and decide issues raised by a question that has become moot. *Reyes v. Prince George's County,* 281 Md. 279, 297 (1977).

The Court of Appeals in *Mercy Hospital, Inc. v. Jackson,* 306 Md. at 562-63, quoting *Lloyd v. Board of Supervisors*

of Elections of Baltimore County, 206 Md. 36, 43 (1954), stated the criteria for deviating from the general rule:

> "[O]nly where the urgency of establishing a rule of future conduct in matters of important public concern is imperative and manifest, will there be justified a departure from the general rule and practice of not deciding academic questions. . . . [I]f the public interest clearly will be hurt if the question is not immediately decided, if the matter involved is likely to recur frequently, and its recurrence will involve a relationship between government and its citizens, or a duty of government, and upon any recurrence, the same difficulty which prevented the appeal at hand from being heard in time is likely again to prevent a decision, then the Court may find justification for deciding the issues raised by a question which has become moot, particularly if all these facts concur with sufficient weight."

Of those criteria, the single one that is pertinent to the matter *sub judice* is that pertaining to a recurrence of a suit similar to that of Mr. Schaefer's. That is, one which "will involve a relationship between government and its citizens, or a duty of government." With regard to that particular criterion, Judge Hammond (later Chief Judge) opined for the Court in *Lloyd v. Board of Supervisors of Elections of Baltimore County.*

> "[A] matter may be said to be of general public interest only in the sense that any statute is, which involves the whole state. Moreover, it does not seem likely that it will recur with any frequency, and if it does again present itself, there need be no difficulty in having it passed upon by this Court as a live issue."

206 Md. at 43-44; *cf. In re Criminal Investigation No. 1-162*, 307 Md. 662, 680-83 (in the Court's opinion, the above criteria were met), *vacating on other grounds* 66 Md. App. 304 (1986). What Judge Hammond said in *Lloyd* is equally applicable to the instant case. If, by happenstance, the issue ever again arises, there would be no difficulty in having it resolved in a timely fashion as a viable issue. As it now stands, however, it is moot and must be dismissed. Md. Rule 1035 b.8.

APPEAL DISMISSED.

COSTS TO BE PAID BY APPELLANT.

MANDATE

Court of Special Appeals

No. 1418, September Term, 1986

MICHAEL SCHAEFER

v.

STATE ADMINISTRATIVE BOARD OF ELECTIONS LAWS et al

JUDGMENT: May 1, 1987: Per Curiam filed. Appeal Dismissed. Costs to be paid by appellant.
June 1, 1987: Motion for Reconsideration filed by appellant.
June 2, 1987: Motion for Reconsideration denied.
June 2, 1987: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: for ANNE ARUNDEL COUNTY
3108919

Record	40.00
In Court of Special Appeals:	
Filing Record on Appeal	50.00
Printing Brief for Appellant	62.40
Reply Brief	57.60
Printing Brief for Appellee	153.60
Portion of Record Extract — Appellee	705.60

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, the second day of June, A.D. 1987.

Herman E. Frieden
Clerk of the Court of
Special Appeals of Maryland

IN THE COURT OF APPEALS
of MARYLAND

MICHAEL SCHAEFER

v.

STATE ADMINISTRATIVE
BOARD OF ELECTION LAWS et al.

Petition Docket No. 213

September Term, 1987

(No. 1418 September Term, 1986
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answer filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ ROBERT C. MURPHY
Chief Judge

Date: September 9, 1987

BEST AVAILABLE COPY

IN THE CIRCUIT COURT OF
THE STATE OF MARYLAND
IN AND FOR THE COUNTY OF ARUNDEL

No. 3108919

MICHAEL SCHAEFER
Plaintiff

VS.

STATE ADMINISTRATIVE BOARD OF ELECTION LAWS; MARIE M. GARBER, Administrator; STATE OF MARYLAND
Defendants

AMENDED NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE is hereby given that plaintiff appeals from denial of petition for certiorari filed by the Court of Appeals September 9, 1987, and from substantive judgments of the Circuit Court for Anne Arundel County entered August 28, 1986 and judgment of the Court of Special Appeals entered May 1, 1987. Appeal is filed pursuant to Title 28, United States Code, sec. 1257(2).

Dated: November 19, 1987

MICHAEL SCHAEFER
Plaintiff Pro Per

CERTIFICATE OF SERVICE

Michael Schaefer, a member of the Bar of the United States Supreme Court, certifies that all parties required to be served have been served with copy of this Amended Notice of Appeal to the Supreme Court of the United States, said service being by mail, postpaid, to J. Joseph Curran, Jr., Attorney General, Linda H. Lamone, Assistant Attorney General, 90 State Circle, Suite 104, Annapolis, Md. 21401-1991.

Dated: November 19, 1987

MICHAEL SCHAEFER, ESQ.
723 St. Paul St.
Baltimore, Md. 21202
& 8840 Villa La Jolla Dr. #112
La Jolla, California 92037

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On December 8, 1987, I served the within Jurisdictional Statement in re: "Michael Schaefer vs. State Administrative Board of Election Laws" in the United States Supreme Court, October Term 1987, No.....;

On the Parties in said action, by placing Three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

J. Joseph Curran Jr. Attorney General
Linda H. Lamone, Assistant Attorney General
90 State Circle, Suite 104
Annapolis, Maryland 21401-1991

All Parties required to be served have been served.

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on December 8, 1987, at Los Angeles, California

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